

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:16-CV-302-D

COLEMAN'S ORIGINAL RESTAURANT,)
and PEGGY COLEMAN,)

Plaintiffs,)

v.)

ORDER

SCOTTSDALE INSURANCE COMPANY,)
SCOTTSDALE INDEMNITY COMPANY,)
SCOTTSDALE SURPLUS LINES)
INSURANCE COMPANY,)
RYZE CLAIM SOLUTIONS, LLC,)
EAGLE ADJUSTING SERVICES, INC.,)
and MICHAEL JOSEPH GERHART,)

Defendants.)

On September 2, 2016, Coleman's Original Restaurant and Peggy Coleman ("plaintiffs") moved to remand this action to Brunswick County Superior Court [D.E. 20]. Plaintiffs, North Carolina citizens, argue that defendant Michael Joseph Gerhart ("Gerhart") is also a North Carolina citizen and therefore defeats complete diversity. See [D.E. 20], [D.E. 21] 2–9; cf. 28 U.S.C. § 1332(a)(1). On September 23, 2016, defendants responded in opposition and argue that plaintiffs fraudulently joined Gerhart in order to defeat diversity jurisdiction. See [D.E. 24] 2–12. On October 11, 2016, plaintiffs replied [D.E. 28].

The court has reviewed the record, North Carolina law, and the parties' arguments concerning fraudulent joinder. See, e.g., Mayes v. Rapoport, 198 F.3d 457, 461 (4th Cir. 1999); Hartley v. CSX Trans., Inc., 187 F.3d 422, 424–25 (4th Cir. 1999); Marshall v. Manville Sales Corp., 6 F.3d 229, 232–33 (4th Cir. 1993); Sampson v. Leonard, No. 4:10-CV-121-D, 2011 WL 129634,

at *2–3 (E.D.N.C. Jan. 12, 2011) (unpublished); Capparelli v. AmeriFirst Home Imp. Fin. Co., 535 F. Supp. 2d 554, 559–61 (E.D.N.C. 2008). Defendants have failed to “show that the plaintiff cannot establish a claim [against Gerhart] even after resolving all issues of law and fact in the plaintiff’s favor.” Hartley, 187 F.3d at 424. Stated differently, the record shows that plaintiffs have “a possibility of a right to relief” against Gerhart and no “outright fraud” appears in plaintiffs’ pleadings. Marshall, 6 F.3d at 33. Thus, the court lacks subject-matter jurisdiction based on diversity jurisdiction.

In sum, plaintiffs’ motion to remand [D.E. 20] is GRANTED. Plaintiffs’ request for attorney’s fees is DENIED. The action is REMANDED to Brunswick County Superior Court.

SO ORDERED. This 21 day of December 2016.



JAMES C. DEVER III
Chief United States District Judge